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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/457,796	12/09/1999	GREGORY MATHUS	5044	8079

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EXAMINER

BEX, PATRICIA K

ART UNIT	PAPER NUMBER
1743	

DATE MAILED: 05/08/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/457,796

Applicant(s)

MATHUS ET AL.

Examiner

P. Kathryn Bex

Art Unit

1743

*-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --***Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 20 June 2002.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.
- 4) Claim(s) 2-5 and 10-28 is/are pending in the application.
- 4a) Of the above claim(s) 16-25 is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 2-5, 10 and 26-28 is/are rejected.
- 7) Claim(s) 11-15 is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) The proposed drawing correction filed on _____ is: a) approved b) disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) All b) Some * c) None of:
1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. _____.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) The translation of the foreign language provisional application has been received.
- 15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) Notice of References Cited (PTO-892) 4) Interview Summary (PTO-413) Paper No(s). _____.
2) Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) Notice of Informal Patent Application (PTO-152)
3) Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____. 6) Other:

DETAILED ACTION

1. Any objection/rejection not repeated herein has been withdrawn.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all

obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

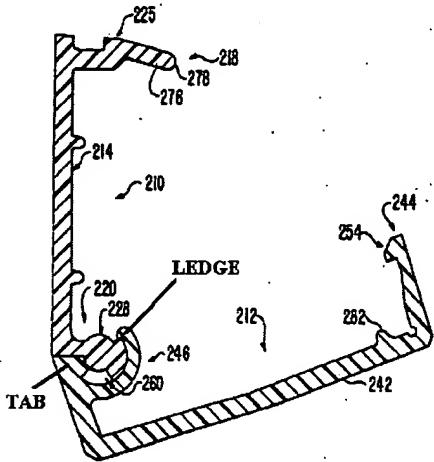
1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

4. Claims 26-28, 2-5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Laska (USP 5,993,745) in view of Corsi *et al* (USP 4,942,271).

Laska teaches a storage assembly for holding multiple test tubes 56, 59 of varying heights and diameters. The assembly comprising a base and a transparent cover portion. The base comprising a plurality of openings 25, wherein a plurality of projecting support pads 30 A-D, 60 A-D are symmetrically positioned within the openings. Moreover, the pads comprise a surface 31 A-D, 61 A-D which engages the test tubes (Figs.1A- 6A). However, Laska does not disclose the use of a rotatable and removable cover comprising a notch, wherein the notch includes a trunnion travel surface and a ledge surface, or a base comprising a trunnion.

Corsi *et al* do teach the use of a rotatable and removable cover. Examiner has modified Figure 12 of Corsi *et al* to clearly show the cover comprising a notch and a base 214 comprising a corresponding trunnion 220. The notch includes a trunnion travel surface 260 and a ledge surface, tab. The ledge surfaces abut the trunnions to prevent rotation of the cover beyond the open position and the tabs underlie and are engagable with the trunnions to impede vertical removal of the cover from the base. Additionally, Corsi *et al* do teach a latching means 254, 218 for securing the cover to the base Such a hinge system can be easily manufactured and does not require numerous parts. Note: process limitations, i.e. the limitations describing the movement of the lid around the trunnion, have not been given any patentable weight, since process limitations are not accorded patentable weight in a claim which is directed to an apparatus.

FIG. 12



Accordingly, it would have been obvious to one of ordinary skill in the art at the time of the claimed invention to have included in the test tube storage assembly of Laska the hinge system, as taught by Corsi *et al*, in order to provide a hinge system which can be easily manufactured and does not require numerous parts (column 1, lines 24-45, Corsi *et al*).

Regarding the shape of the openings, it would have been an obvious matter of design choice to have made the shape of the openings in the base of Laska rectangular. Moreover, since applicant has not disclosed that rectangular openings solves any stated problem or is for any particular purpose and it appears that the invention would perform equally well with circular openings. This same reasoning applies to the shape of the surface pads.

5. Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over Laska (USP 5,993,745) and Corsi *et al* (USP 4,942,271) as applied to claim 26, and further in view of Berry, Jr. (USP 5,415,846).

Laska and Corsi *et al* as discussed above, do not teach the specific use of slide latches to secure the cover to the base. Berry, Jr. does teach two slide latch mechanisms 49 designed for securing the lid 22 to the tray 21. The base comprising first and second base sidewalls 25, 26 each having a slide surface having a lengthwise groove 31 which mates with a lengthwise tongue 58 of the slide latch (Figs. 1-3, 6-7). Note: lengthwise has been interpreted to mean along the direction of length of the respective elements, wherein these elements not necessarily the same direction.

Accordingly, it would have been obvious to one of ordinary skill in the art at the time of the claimed invention to have included in the system of Laska and Corsi *et al*, the securing mechanism of Berry, Jr. in order to provide a quiet smooth and convenient latch design (column 2, lines 30-34).

Allowable Subject Matter

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6. Claims 11-15 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

7. The following is a statement of reasons for the indication of allowable subject matter: see previous Office Action.

Response to Arguments

8. Applicant's arguments filed February 24, 2003 have been fully considered but they are not persuasive. Applicant argues that Corsi *et al* (USP 4,942,271) teach a cover which is snap-fitted to the base and must be forcibly separated from the base, and thus the hinges impede that separation. Examiner contends that Corsi *et al* does not teach unimpeded vertical movement of the cover about the trunnions between a closed position and an inclined open position. Additionally, Applicant cites column 6, lines 8-9 for support that the trunnions 220 are snapped into notch 260. However upon closer inspection of the reference, Corsi *et al* do not teach that the trunnions 220 are snapped into notch 260, but that the latching mechanism comprising legs 218, 244 are snap-fitted together. Moreover, the embodiment of Corsi *et al* in Figures 10-11 clearly show the notch 260 larger than the maximum transverse dimension of the trunnion 220, thereby providing unimpeded vertical removal of the cover.

Conclusion

9. No claims allowed.

10. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to P. Kathryn Bex whose telephone number is (703) 306-5697. The examiner can normally be reached on Mondays-Thursdays, alternate Fridays from 6:00 am to 3:30 pm EST. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jill Warden can be reached on 308-4037.

Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (703) 308-0661.

Kathryn Bex
P. Kathryn Bex
Patent Examiner
AU 1743
May 5, 2003

Jill Warden
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